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11 UNITED STATES BANKRUPTCY COURT
12 EASTERN DISTRICT OF CALIFORNIA

13 In Re:

14 JEFFERY EDWARD ARAMBEL,
15 Reorganized Debtor.

Case No. 18-90029-E-11

Chapter 11

DCN: MF-44

Date: November 21, 2019

Time: 10:30 a.m.

Place: 1200 I Street, Suite 4
Modesto, California

Hon. Ronald H. Sargis

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17 **REORGANIZED DEBTOR'S *EX PARTE* MOTION TO APPROVE BIDDING**
18 **PROCEDURES RE MOTION TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS**
19 **(224.7-ACRE PORTION OF ARAMBEL BUSINESS PARK)**

20 COMES NOW Jeffery Edward Arambel, Reorganized Debtor herein, with the consent of the
21 Plan Administrator, who moves *ex parte* for entry of an order, pursuant to Bankruptcy Code Section
22 363(b) and Rule 6004 of the Federal Rules of Bankruptcy Procedure, approving certain bidding and
23 sale procedures concerning the sale of a portion of that certain real property known as "Arambel
24 Business Park," consisting of two parcels of real property (collectively, the "Property"): Parcel A is
25 approximately 119.1 acres of land and assigned Assessor Parcel Numbers 021-022-046, 021-022-
26 045 and 021-022-044, and Parcel B is approximately 105.6 acres of land and assigned Assessor
27 Parcel Numbers 021-022-043 and 021-022-028, for a total of 224.7 acre, all as further described in
28 Exhibit "A" to the Purchase and Sale Agreement (the "PSA"), offered as Exhibit "1" to the Motion,
to Series 12, P.S., a Ledger of Series Entities for HMHMHYLV LLC, a Delaware limited liability

1 company ("HMHMHYLV LLC") free and clear of liens and other interests pursuant to 11 U.S.C.
2 § 363(b) and (f), and respectfully represents as follows:

3 **I. JURISDICTION AND VENUE**

4 The Court has jurisdiction of these matters pursuant to 28 U.S.C. §§ 157 and 1334. This is a
5 core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28
6 U.S.C. §§ 1408 and 1409. This Motion is made pursuant to Bankruptcy Code Sections 363(b) and
7 1123(b)(4), and Rule 6004 of the Federal Rules of Bankruptcy Procedure. The Court retained
8 jurisdiction under the Confirmed Plan of Reorganization (the "Plan") to review and approve sales of
9 estate property.

10 **II. BACKGROUND**

11 The within case was commenced by filing a voluntary chapter 11 petition on January 17,
12 2018. The Plan was confirmed by order entered on September 16, 2019, and the Reorganized
13 Debtor is performing under the terms of the confirmed Plan and under the supervision of the Plan
14 Administrator.

15 Among the assets of the estate is the real property described as the Arambel Business Park, a
16 portion of which is comprised of the land assigned Assessor's Parcel Numbers 021-022-046, 021-
17 022-045, 021-022-044, 021-022-043, and 021-022-028, and consisting of approximately 224.7 acres.

18 The Reorganized Debtor, with the consent of the Plan Administrator, has presented a motion
19 (the "Motion") to approve the sale of the Property to HMHMHYLV LLC in two phases subject to
20 the terms and conditions of the of the PSA. *See* Dckt. No. 1034. Under the terms of the PSA,
21 HMHMHYLV LLC agreed to purchase the property for the sum of \$13,800,069.00 for Parcel A and
22 between \$12,235,829.76 to \$13,109,817.60 for Parcel B based on when the closing of the sale of
23 Parcel B occurs (with greater amounts due in the event the sale closes later). The Motion seeks
24 authority to sell the Property free and clear of liens, with the liens attaching to the proceeds from the
25 sale, and for authority to pay certain closing costs, real estate broker commission, income taxes, and
26 other fees and assessments from the sale proceeds. The sale is subject to overbidding.

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III. MOTION

Pursuant to Bankruptcy Code Sections 363(b) and 1123(b)(4), and Rule 6004 of the Federal Rules of Bankruptcy Procedure, the Reorganized Debtor, with the consent of the Plan Administrator, requests that the Court approve certain bidding and sales procedures, to wit:

1. The auction shall be held on November 21, 2019, at 10:30 a.m., in the courtroom of the Honorable Ronald H. Sargis, located at 1200 I Street, Suite 4, Modesto, California, or at another time or location if ordered by the Court and announced at the aforesaid time and place.

2. All potential bidders must deliver to the counsel for the Reorganized Debtor on behalf of the Plan Administrator, at any time before the auction commences, \$100,000 in certified funds on account of the earnest money deposit required by Section 2(a) of the PSA. HMHMHYLV LLC has already delivered its deposit into escrow.

3. At the time and place of auction, all bidders (other than HMHMHYLV LLC) shall present the counsel for the Reorganized Debtor on behalf of the Plan Administrator with evidence of funds or financing acceptable to the Plan Administrator in an amount necessary to meet the initial bid plus the minimum initial overbid amount (for a total of \$26,310,898.76).

4. Bids shall be submitted for the two parcels on a consolidated basis. The Reorganized Debtor proposes that the increased bid amount be allocated between the two parcels on a pro-rata basis (53.004% to Parcel A and 46.996% to Parcel B) and that the increased purchase price for the delayed closing of Parcel B be maintained on a percentage basis (that is, 103.571% of the initial Parcel B Purchase Price for closing by the deadline imposed by Section 3(b)(ii) of the PSA, and 107.143% of the initial Parcel B Purchase Price for closing by the deadline imposed by Section 3(b)(iii) of the PSA).

5. The Reorganized Debtor proposes that the minimum initial overbid be \$275,000 (that being about 1% of the initial purchase price), and the minimum amount of all subsequent bids be not less than \$130,000 (that about being about 0.5% of the initial purchase price). The Reorganized Debtor proposes that bids be accepted from bidders or their authorized representatives who are present at the auction in person; bids by telephone, facsimile, email, letter or similar means will not be accepted unless the Plan Administrator expressly agrees otherwise.

